


Defendant is correct that Plaintiff's Complaint was filed *one day* beyond the time permitted by 42 U.S.C. § 405(g) and 20 C.F.R. § 422.210. Plaintiff's counsel concedes that his law firm filed Plaintiff's Complaint one day late, but contends that tolling the statute by one day

is equitable, as he was diligent in pursuing Plaintiff's right to initiate a civil action and Defendant did not directly allege that it would suffer prejudice if the Court tolled the deadline by one day. Docket Nos. 20, 21. Although Plaintiff's counsel accepts responsibility for his firm's filing this action one day late, he asks this Court to equitably toll the statute by one day "given [his] reasonable reliance on the competence of his paralegal and the absence of any significant prejudice to the Commissioner if the Court considered Plaintiff's claim on the merits." *Id.*

The undersigned agrees with Plaintiff's counsel that equity favors tolling the statute for one day. Accordingly, the undersigned recommends that Defendant's Motion to Dismiss be DENIED, that Plaintiff's Complaint be deemed timely-filed, and that Defendant file its Answer and the Administrative Record so that Plaintiff's claims may be considered on the merits.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.


E. CLIFTON KNOWLES
United States Magistrate Judge